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SUBJECT: CHECKS AND BALANCES IN JORDAN, PART 2 -  
PROVISIONAL LAWS AND THE MARGINALIZATION OF PARLIAMENT

REF: A. AMMAN 580

[B](#). 07 AMMAN 251

[C](#). 07 AMMAN 4559

[D](#). INR POLL - "JORDANIANS OVERWHELMINGLY SUPPORT  
THEIR SYSTEM OF GOVERNMENT" (DEC 07)

[E](#). AMMAN 1823

Classified By: Ambassador David Hale  
for reasons 1.4 (b) and (d).

[1](#). (SBU) This cable is part two of a series which examines the peculiar system of internal checks and balances that serves as an accountability mechanism for Jordan's government. The first part looked at the Legislative Bureau, where all of Jordan's laws and regulations are written. This cable examines the impact of provisional laws. Part three will focus on the powers and position of parliament.

[2](#). (C) Summary. Jordan's constitution allows governments to enact laws without parliamentary approval when the legislature is not in session. These provisional laws then remain in force until parliament reconvenes and votes on them. In the past seven years, this power has been used to a far greater extent than any other time in Jordan's history, allowing the government to push through controversial or unpopular laws without immediate scrutiny from parliament or the public. The consequent flood of provisional laws is an anchor on parliament's productivity. Even so, provisional laws allow the government to enact needed reforms which may be too complicated or socially divisive for parliament to effectively deal with. The fact that provisional laws are rarely vetoed later by parliament or overturned by the courts is a grudging acknowledgment of their value. End Summary.

#### The Legal Basis

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[3](#). (U) Article ninety-four of Jordan's constitution allows the Council of Ministers to issue provisional laws covering "matters...which admit of no delay or which necessitate expenditures incapable of postponement" when parliament is dissolved. The power to issue provisional laws in this way is subject to pro forma royal approval. Up until this point, the King has not required that governments produce justification of why the enactment of a provisional law is "incapable of postponement." Provisional laws enter into force immediately, and maintain their legal effect unless and until they are annulled.

[4](#). (U) The barriers to rejecting a provisional law are steep. Under article ninety-four of the constitution, provisional laws must be "placed before the parliament" at the start of its next session. There is no requirement for a vote or time limit that would force the issue. If provisional laws float to the top of the lower house's calendar, it can approve, amend, or reject the law. If it is approved or amended, the law moves on to the Senate, which has the same options. In the event of rejection by both houses (and approval of that rejection by the King), the law is voided from that point on. It is still regarded as

legally binding from the time that it was promulgated up to the time that it was declared void, however.

15. (SBU) According to Jordan's judicial code (although not its constitution), provisional laws are unique in the sense that unlike ordinary laws, their constitutionality can be challenged in court. Since Jordan does not have a constitutional court, laws passed through the normal parliamentary procedure have yet to be struck down by any judicial body as against the constitution (Ref A). Provisional laws are an exception to this - they can be declared unconstitutional by the High Court of Justice. Note: The U.S.-Jordan extradition treaty, enacted by King Hussein in 1997 as a temporary law, was effectively struck down in this way. End Note.

#### Clogging Up the System

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16. (C) From the entry into force of Jordan's constitution in 1952 until recently, article ninety-four of Jordan's constitution was rarely used. From 1930 to 2001, only 60 provisional laws were enacted. This changed in 2001, when the government headed by Ali Abu Ragheb was appointed by King Abdullah. In that year, the term of parliament (originally seated in 1997) was cut short in anticipation of early elections. Those elections were then delayed, causing an interregnum which lasted from 2001 to 2003. In this two-year period, Prime Minister Abul Ragheb essentially ruled by decree (with the backing of the King) through the use of provisional laws.

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17. (C) A total of 184 provisional statutes were enacted in this timeframe. Whatever the reason for the continued suspension of parliament, the King used this period to put in place sweeping economic reforms that would have been difficult, perhaps impossible, to pass through parliament rapidly. Many key banking and financial reforms were enacted during this period, including the establishment of the Aqaba Special Economic Zone Authority (ASEZA), investment promotion laws, and reforms of the Chambers of Commerce and Industry. Yet most of the economic laws were passed in 2003 - the last year of the interregnum - and do not represent the majority of the laws enacted in this period. Most of the provisional laws enacted between 2001 and 2003 were political measures, and these were given priority over the economic statutes. Among the pieces of provisional legislation enacted in 2001 is an electoral law which deliberately under-represented Palestinian voters and a restrictive law on public gatherings (amendments to which are currently the subject of much debate in parliament).

#### An Anchor on Parliament

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18. (C) When a new parliament was installed in 2003, it faced the daunting task of dealing with all of the accumulated legislation. The parliament's agenda included the 184 provisional laws promulgated during parliament's two-year hiatus, several provisional laws predating 2001, as well as other orphaned legislation from the 1997-2001 parliament. The main result was that of the 255 laws endorsed by the parliament between 2003 and 2007, nearly two-thirds were originally provisional laws. Veteran legislators in the parliament tell us that in the absence of the necessary time to review all of the provisional legislation, MPs were effectively forced to accept some of the laws by simply not considering them. They were also inhibited from addressing more contemporary issues during their term due to the glut of provisional laws on the parliament's agenda.

19. (C) The situation was so bad that the burden of provisional laws sparked a short-lived rebellion in the lower house. In 2005, four temporary laws were rejected by the

lower house without discussion as a signal that the practice would no longer be tolerated. Some deputies even proposed an amendment to Jordan's constitution that would have eliminated the system of provisional laws, saying that it "undermined the Kingdom's legislative authority." The movement quickly died out, but Embassy contacts state that the uneasiness surrounding temporary laws remains.

¶10. (SBU) Recognizing that the situation was getting out of hand, Prime Minister Marouf Bakhit pledged not to use provisional laws when his government was installed in November 2005. The practice proved hard to shake, however. Between the dissolution of parliament in August 2007 and the seating of new deputies in December, additional provisional laws were passed by the outgoing administration. The new parliament inherited these laws, several provisional laws that still remain from 2001-2003, and other leftover legislation from the previous parliament - 97 laws in total.

#### Efficiency and Necessity

¶11. (C) Recent Jordanian governments have found the system of provisional laws to be a risk-free way to pass unpopular, complicated, and controversial statutes. While the backlog of provisional laws in front of the parliament can be burdensome, for the government this option is irresistible, given parliament's obstructionism and lack of expertise in dealing with complicated legislation. In this sense, provisional laws are used to provide political cover for lawmakers who are hesitant to be connected with a piece of legislation (Ref B). For example, every election law in Jordan's history started out as a provisional law. These statutes fundamentally alter the shape, size, and demographics of districts for sitting MPs. While the issuance of electoral statutes through the provisional law system limits national debate on the subject, it also accepts the reality that MPs are unlikely to ever change the electoral law that brought them into office.

¶12. (C) Another piece of necessary (but socially controversial) legislation which remains in force due to the provisional law system is a statute from 2001 which allows women to initiate divorce proceedings against the will of their husbands. The law was twice overwhelmingly rejected by the lower house several years ago, but has since been buried on the calendar of the Senate, allowing it to remain in force.

¶13. (C) In an environment in which parliament opposes rather than initiates reform, the provisional law loophole is a

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convenient mechanism for reform-minded governments to effect change without debate - but also without any national buy-in (Ref B). The provisional law system gives the appointed governments of Jordan legislative power that trumps the legislature itself. By issuing provisional laws, governments create a fait accompli that in practice is difficult for parliaments to overcome. Even if provisional laws are rejected by the elected lower house, they can be stalled indefinitely in the appointed Senate or resuscitated by the King. Constitutional law professor Mohammed Ghazwi says that this imbalance of powers "ruined the spirit" of the 1952 constitution, which had carefully laid out necessary checks and balances.

#### Checks and Balances

¶14. (C) Despite the potential for abuse that exists in the system of provisional laws, the efficiency of bypassing parliament from time to time remains a powerful temptation. In a recent INR poll, only five percent of Jordanians favored a system in which parliament was the dominant actor (Ref D). There also seems to be broad recognition that any proposed amendment to Jordan's constitution eliminating temporary laws

would not garner sufficient political support.

¶15. (C) While there are ways for truly unpopular and unnecessary laws to be overturned in parliament, in practice it rarely happens. Note: A recent exception was a punitive traffic law, promulgated by the Bakhit government before the elections. Described as "too harsh" by parliamentarians and the media, it was soundly defeated and taken off the books. End Note. Despite some small acts of rebellion, parliaments since 2003 have proven largely unwilling to veto temporary laws, preferring instead to focus on newer legislation that appears alongside provisional laws at the beginning of a parliamentary session.

¶16. (SBU) Similarly, the courts have rarely received petitions against provisional laws. The last provisional law to face scrutiny by the High Court of Justice was a press and publications law from 2001. The court struck down that law, saying that the government had not provided any justification as to the immediate necessity of the statute. There were political consequences to that lawsuit, however - the Chief Justice of the High Court was removed by the Judicial Council because of his ruling in that case. Since then, the large numbers of provisional laws issued by successive governments have not faced a single challenge in the Jordanian court system.

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